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16  
17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 ROBERT STEINBERG, ROBERT N.  
ADLER, FRANK V. FINIZIA, BRIAN C.  
20 LATZ, GERARD SCORZIELLO, PAUL  
ROLES, JANEMARIE LENIHAN, DAVID  
21 ANDREW GASMAN, ISRAEL HARMAN  
and JOHN MASKUBI, on behalf of  
22 themselves, the general public, and all others  
similarly situated,

23 Plaintiffs,

24 vs.

25 MORGAN STANLEY & CO.  
26 INCORPORATED and  
MORGAN STANLEY DW INC.,

27 Defendants.  
28

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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

Case 06CV 2628 BEN NLS

CLASS AND COLLECTIVE  
ACTION COMPLAINT

Jury Trial Demanded

OP

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**NATURE OF THE ACTION**

1. Plaintiffs, Robert Steinberg, a resident of New Jersey, Robert N. Adler, a resident of New Jersey, Frank V. Finizia, a resident of New Jersey, Brian C. Latz, a resident of New Jersey, Gerard Scorziello, a resident of New Jersey, Paul Roles, a resident of New York, Janemarie Lenihan, a resident of Connecticut, David Andrew Gasman, a resident of New York, Israel Harman, a resident of New York, and John Maskubi, a resident of New Jersey, by and through their attorneys, make the following allegations upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters. Plaintiffs bring this class and collective action on behalf of themselves and all other persons similarly situated who suffered damages as a result of the violations of the Federal Fair Labor Standards Act, New Jersey Labor Laws, New York Labor Laws, Connecticut Labor Laws and the labor laws of the other States of the United States and other wrongful conduct and improper labor practices committed by defendants Morgan Stanley & Co. Incorporated, whose address is 1585 Broadway, New York, NY 10036 and Morgan Stanley DW Inc., whose address is 2000 Westchester Avenue, Purchase, NY 10577 (hereafter collectively referred to as "Morgan Stanley" or "defendants").

2. Plaintiffs bring this lawsuit as a collective action under the Federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* and as a class action pursuant to Fed.R.Civ.P. 23. The persons plaintiffs seek to represent are: (a) current and former Financial Advisors (also known as and sometimes referred to herein as "Security Brokers") that have been employed by Morgan Stanley in the United States outside of the State of California; (b) current and former Financial Advisor Trainees (also known as and sometimes referred to herein as "Security Broker Trainees" or "Trainees") that have been employed by Morgan Stanley in the United States outside of the State of California; and (c) current and former Producing Branch Managers, Assistant Branch Managers, and Sales Managers that have been employed by Morgan Stanley anywhere in the United States, including California (collectively referred to herein as "Covered Positions"), who were employed by defendants on a commission basis and to whom defendants failed to pay overtime for work performed in excess of 40 hours per week as required by law and/or were subjected to unlawful deductions from their pay by defendants and/or were unlawfully compelled to pay for defendants' business expenses and/or were

1 unlawfully charged back for commissions and/or the actual value of stock losses allegedly caused by  
2 the employee through simple negligence or no fault of the employee at all.

3         3. The groups and classes that plaintiffs seek to represent include (a) the “Federal  
4 Collective Group” that consists of all individuals who were or are employed by defendants in Covered  
5 Positions in the United States of America outside of the State of California at any time from  
6 September 1, 2002 who timely opt-in to any such collective group (the “Federal Eligibility Period”),  
7 (b) the “New Jersey Class” that consists of all individuals, employed by defendants in Covered  
8 Positions in the State of New Jersey at any time since September 1, 1998 (the “New Jersey Class  
9 Period”), the “New York Class” that consists of all individuals, employed by defendants in Covered  
10 Positions in the State of New York at any time since September 1, 1998 (the “New York Class  
11 Period”), the “Connecticut Class” that consists of all individuals, employed by defendants in Covered  
12 Positions in the State of Connecticut at any time since September 1, 2002 (the “Connecticut Class  
13 Period”) and the “Other States Class” that consists of all individuals, employed by defendants in  
14 Covered Positions in the United States other than the States of New Jersey, New York and  
15 Connecticut at any time during the maximum applicable law limitations periods of those jurisdictions  
16 in the United States, dating back from September 1, 2005 (the “Other States Class Period”). The term  
17 “Classes” shall include the New Jersey Class, the New York Class, the Connecticut Class and the  
18 Other States Class and the term “Class Periods” shall include the New Jersey Class Period, the New  
19 York Class Period, the Connecticut Class Period and the Other States Class Period.

20         4. Defendants violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207, by  
21 failing to pay the Federal Collective Group overtime pay for a work week longer than forty (40) hours.

22         5. Defendants violated the rights of the New Jersey Class under the New Jersey State  
23 Wage and Hour Law, N.J.S.A. 34:11-56a through 34:11-56a30 (the “Wage and Hour Law”), and its  
24 implementing regulations and the public policy articulated therein, as follows:

25             a. Defendants violated the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-  
26             56a to 34:11-56a30, which requires employers to pay non-exempt employees overtime  
27             at the rate of one and one-half times the employee’s regular salary for all hours worked  
28

1 in excess of forty (40) hours in any given workweek, by failing to pay New Jersey  
2 Class

3 members any such overtime compensation.

4 b. Defendants violated the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-  
5 4.4, which prohibits an employer from “withholding” or “diverting” from wages any  
6 sums other than those specifically authorized by that statute, by impermissibly  
7 deducting monies from the compensation of class members to pay for support staff and  
8 other overhead expenses and/or by refusing to reimburse New Jersey Class members  
9 who had incurred such expenses at the direction and insistence of defendants and by  
10 charging back earned commissions and stock losses to the New Jersey Class.

11 c. Defendants violated the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.3,  
12 which provides that when an employee is discharged or terminates employment for any  
13 reason, the employer must pay the employee all wages due not later than the regular  
14 payday for the pay period during which the employee’s termination, suspension or  
15 cessation of employment took place, by failing to tender payment and/or restitution of  
16 wages owed or in the manner required by New Jersey law to the New Jersey Class.

17 6. Defendants violated the rights of the New York Class under New York Labor Law and  
18 the New York State Labor Department’s Codes, Rules and Regulations (“NYCRR”) as follows:

19 a. Defendants violated 12 NYCRR § 142-2.2 that requires employers to pay non-  
20 exempt employees overtime at the rate of one and one-half times the employee’s  
21 regular salary for all hours worked in excess of 40 hours in any given workweek.

22 b. Defendants violated New York Labor Law Section 193 by impermissibly  
23 deducting monies from the compensation of certain New York Class members to pay  
24 for support staff and other overhead expenses.

25 7. Defendants violated the rights of the Connecticut Class under Connecticut labor law:

26 a. Under Connecticut law, “any employer who pays or agrees to pay to an  
27 employee less than the minimum fair wage or overtime wage shall be deemed in  
28 violation of the provisions of this part.” Conn. Gen. Stat. § 31-60(a). A “wage” is

1 defined as "compensation for labor or services rendered by an employee, whether the  
2 amount is determined on a time, task, piece, commission or other basis of calculation."

3 Conn. Gen. Stat. § 31-71(a)(3).

4 b. In Connecticut, the workweek is forty hours and any time worked above that  
5 requires payment at the rate of time and a half. Conn. Gen. Stat. § 31-76(c) ("No  
6 employer, except as otherwise provided herein, shall employ any of his employees for a  
7 workweek longer than forty hours, unless such employee receives remuneration for his  
8 employment in excess of the hours above specified at a rate not less than one and one-  
9 half times the regular rate at which he is employed.")

10 8. Defendants violated the rights of the Other States Class as provided under the labor  
11 laws of each of the jurisdictions of the United States which provide for a) an overtime payment rate for  
12 work in excess of 40 hours, and b) prohibit deductions from wages except for those deductions  
13 allowed by law.

14 9. As a result of defendants' violation of the FLSA, New Jersey, New York, Connecticut  
15 and Other States Labor Laws, plaintiffs and members of the Federal Collective Group and members of  
16 the Classes were illegally and grossly under-compensated for their work.

#### 17 **JURISDICTION AND VENUE**

18 10. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C.  
19 § 1331, federal question jurisdiction, 28 U.S.C. § 1332(d), the Class Action Fairness Act of 2005, and  
20 28 U.S.C. § 1367, supplemental jurisdiction of state law claims.

21 11. Venue is proper under 28 U.S.C § 1391(b)(1) and § 1391(c) because the named  
22 defendants are resident in this District.

#### 23 **PARTIES**

24 12. During the Federal Eligibility and New Jersey Class Periods plaintiffs Robert  
25 Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz and Gerard Scorziello were employed by  
26 Morgan Stanley in Covered Positions in the State of New Jersey.

1           13.     During the Federal Eligibility and New York Class Periods plaintiffs Paul Roles, David  
2 Andrew Gasman, Israel Harman and John Maskubi were employed by Morgan Stanley in Covered  
3 Positions in the State of New York.

4           14.     During the Federal Eligibility and Connecticut Class Periods plaintiff Janemarie  
5 Lenihan was employed by Morgan Stanley in a Covered Position in the State of Connecticut

6           15.     During the Federal Eligibility and Class Periods, defendants Morgan Stanley & Co.  
7 Incorporated and Morgan Stanley DW Inc., were and are wholly owned subsidiaries of Morgan  
8 Stanley, a corporation, and were and are Delaware corporations with their principal places of business  
9 in the State of New York. Morgan Stanley does business in all the jurisdictions of the United States as  
10 a NASD registered securities brokerage firm with offices located nation-wide throughout the United  
11 States, including the States of California, New Jersey, New York and Connecticut. Morgan Stanley  
12 employs thousands of persons in Covered Positions throughout the United States. Morgan Stanley has  
13 over 50,000 employees and over 600 offices and at any one time plaintiffs estimate that each of the  
14 Classes exceed 500 in total number of Covered Positions and far exceed that amount during the Class  
15 Periods.

16           16.     Plaintiffs, upon information and belief, allege that during the Federal Eligibility and  
17 Class Periods, each defendant was the agent of the other defendant, and in performing the acts alleged  
18 in this Complaint was acting within the course and scope of that agency and any reference to  
19 "defendant" or "defendants" shall mean "defendants and each of them." Defendants are individually,  
20 jointly and severally liable as the employers of the plaintiffs and each plaintiff class member because  
21 each defendant directly or indirectly, or through an agent or any other person, employed or exercised  
22 control over the wages, hours and working conditions of plaintiffs.

23                   **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

24           17.     Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz, Gerard  
25 Scorziello, Paul Roles, David Andrew Gasman, Israel Harman, John Maskubi and Janemarie Lenihan  
26 bring this action on behalf of themselves, and the Federal Collective Group pursuant to the Fair Labor  
27 Standards Act, § 216(b) and on behalf of themselves and the New Jersey, New York, Connecticut and  
28 Other States Classes pursuant to Fed.R.Civ.P. 23.



1           18.     Plaintiffs are informed and believe that there are thousands of members of the New  
2     Jersey, New York, Connecticut and Other States Classes and thousands of members of the Federal  
3     Collective Group, and each Class is so numerous that joinder is impractical.

4           19.     There is a well-defined community of interest in the questions of law and fact affecting  
5     the Federal Collective Group and the Classes as a whole. The questions of law and fact common to  
6     the Federal Collective Group and to each of the Classes predominate over questions which may affect  
7     only individual members of the Federal Collective Group and each of the Classes, including the  
8     following:

9           a.     Whether defendants failed to adequately compensate the members of the  
10     Federal Collective Group for overtime hours worked as required by the FLSA, 29 U.S.C. §  
11     207, and failed to adequately compensate the members of the New Jersey, New York,  
12     Connecticut and Other States Classes for overtime hours worked as required by New Jersey  
13     State Wage and Hour Law, N.J.S.A. 34:11-56a through 34:11-56a30, 12 NYCRR § 142-2.2,  
14     Conn. Gen. Stat. § 31-76(c) and as required by the labor laws of the Other States, because  
15     plaintiffs and members of the Federal Collective Group and the Classes are not exempt  
16     employees under the FLSA or New Jersey State Wage and Hour Law, NY Labor Law and 12  
17     NYCRR § 142-2.2, Connecticut General Statute § 31-76(i) or the labor laws of the Other  
18     States.

19           b.     Whether defendants wrongfully deducted monies from the New Jersey, New  
20     York, Connecticut and Other States Class members' wages and/or otherwise required New  
21     Jersey, New York, Connecticut and Other States Class members to pay for support staff and  
22     other overhead expenses and for reversed trades in violation of New Jersey State Wage and  
23     Hour Law, N.J.S.A. 34:11-4.4, New York Labor Law § 193, Connecticut General Statute § 31-  
24     71(e) and the labor laws of the Other States.

25           c.     Whether defendants violated the New Jersey Wage Payment Law, N.J.S.A.  
26     34:11-4.3, which provides that when an employee is discharged or terminates employment for  
27     any reason, the employer must pay the employee all wages due not later than the regular  
28     payday for the pay period during which the employee's termination, suspension or cessation of



1 employment took place, by failing to tender payment and/or restitution of wages owed or in the  
2 manner required by New Jersey law to the New Jersey Class.

3 d. Whether the members of the Federal Collective Group and the Classes have  
4 been damaged and, if so, the extent of such damages.

5 20. As employees of defendants, which failed to adequately compensate plaintiffs for  
6 overtime hours worked as required by law, and improperly charged them for expenses, plaintiffs are  
7 asserting claims that are typical of the claims of the Federal Collective Group and the Classes.  
8 Plaintiffs will fairly and adequately represent and protect the interests of the Federal Collective Group  
9 and the Classes and have no interests antagonistic to those of the other members of the Federal  
10 Collective Group and the Classes. Plaintiffs have retained attorneys who are competent and  
11 experienced in the prosecution of class and collective action litigation.

12 21. Plaintiffs and other members of the Federal Collective Group and the Classes have  
13 suffered damages as a result of defendants' wrongful conduct. Because of the size of the claims of the  
14 individual members of the Federal Collective Group and the Classes, few, if any, members of the  
15 Federal Collective Group and the Classes could afford to seek legal redress for the wrongs complained  
16 of herein. A collective and class action is, therefore, superior to other available methods for the fair  
17 and efficient adjudication of the controversy. Absent a collective and class action, the members of the  
18 Federal Collective Group and the Classes likely will not obtain redress of their injuries and defendants  
19 will retain the proceeds of their violations of FLSA § 207, N.J.S.A. §§ 34:11-56a through 34:11-56a30  
20 and 34:11-4.4, New York Labor Law § 193 and 12 NYCRR § 142-2.2, Conn. Gen. Stat. §§ 31-76(c)  
21 and 31-71(e) and the labor laws of the Other States.

22 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

23 22. Defendants sold and sell securities and other financial products with offices  
24 nationwide.

25 23. Plaintiffs, Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz, Gerard  
26 Scorziello, Paul Roles, David Andrew Gasman, Israel Harman, John Maskubi and Janemarie Lenihan  
27 were inside sales persons whom defendants paid on a commission basis without any premium for  
28 overtime pay as required by law.

3           25. Defendants also charged and/or refused to compensate the members of the Classes for  
4 other costs of doing business.

26. If a customer challenged the transactions done for their benefit by the Securities Broker members of the Classes, defendants would deduct the amount of any loss from the commissions due the securities broker both for the actual losses incurred by the customer and any commission paid on that transaction.

9           27.     Neither plaintiffs nor the members of the Classes were or are part of any group exempt  
10    from the overtime requirements of Federal, New Jersey, New York, Connecticut or Other States' laws.

28. Members of the New Jersey, New York and Connecticut Classes were and are not “professionals” and did not perform executive or administrative functions as defined by New Jersey Wage & Hour Regulations §§ 12:56-7.1 through 7.6, 12 NYCRR §§ 142.2.14(c)(4)(iii) and 142-2.14(c)(4)(i) and 142-2.14(c)(ii) and Connecticut regulation §31-60-14.

15           29.     Plaintiffs and other members of the Classes were not and are not outside salesmen as  
16 defined in the FLSA and under New Jersey, New York and Connecticut labor laws and the labor laws  
17 of Other States, since they performed their sales functions inside defendants' offices.

**FIRST CLAIM FOR RELIEF**  
**Restitution for Failure to Pay Overtime to the Federal Collective Group**  
**(Violation of FLSA § 207)**

20           30.     Plaintiffs incorporate by reference all of the allegations of all prior paragraphs as  
21     though fully set forth herein.

22      31.      Section 207(a)(1) of the Federal Fair Labor Standards Act provides in pertinent part:

23 Except as otherwise provided in this section, no employer shall employ  
24 any of his employees who in any work week is engaged in commerce or in  
25 the production of goods for commerce, for a work week longer than forty  
hours unless such employee receives compensation for his employment in  
excess of the hours above specified at a rate not less than one and one-half  
times the regular rate at which he is employed.

29 U.S.C. § 207(a)(1) (2005).

1           32.     Section 207(i) of the Federal Fair Labor Standards Act provides for certain exemptions  
2 from the above provision:

3  
4           No employer shall be deemed to have violated subsection (a) [of this  
5 section - mandate to compensate employees for overtime] by employing  
6 any employee of a **retail or service establishment** for a workweek in  
excess of the applicable work week specified therein, if (1) the regular rate  
of pay of such employee is in excess of one and one-half times the  
minimum hourly rate applicable to him under section 6 [29 U.S.C. § 206],

7           and (2) more than half his compensation for a representative period (not  
8 less than one month) represents commissions on goods or services.

9           29 U.S.C. § 207(i) (2005) (emphasis added).

10           33.     The Section 207(i) exemption does not apply to the Federal Collective Group herein  
11 because brokerage houses do not qualify as “retail or service establishments.” Section 779.317 of the  
12 Secretary of Labor’s regulations provides a “partial list of establishments to which the retail concept  
13 [and thus the section 207(i) exemption] does not apply.” 29 U.S.C. § 779.317 (2005). Included in that  
14 list are

15           “brokers, custom house; freight brokers; stock or commodity brokers, [and] ... securities dealers.” *Id.*

16           34.     Section 213(a)(1) of the Federal Fair Labor Standards Act provides that the overtime  
17 pay requirement does not apply to:

18           any employee employed in a bona fide **executive, administrative, or**  
19 **professional capacity** (including any employee employed in the capacity  
20 of academic administrative personnel or teacher in elementary or  
21 secondary school), or in the capacity of **outside salesman** (as such terms  
22 are defined and delimited from time to time by regulations of the  
23 Secretary, subject to the provisions of the Administrative Procedure Act [5  
24 U.S.C. §§ 551 *et seq.*] except than [*sic*] an employee of a retail or service  
establishment shall not be excluded from the definition of employee  
employed in a bona fide executive or administrative capacity because of  
the number of hours in his work week which he devotes to activities not  
directly or closely related to the performance of his executive or  
administrative activities, if less than 40 per centum of his hours worked in  
the work week are devoted to such activities).

25           29 U.S.C. § 213(a)(1) (2005) (emphasis added).

26           35.     The Section 213(a)(1) exemption for employees employed in a professional capacity is  
27 inapplicable because, as the courts have held, securities brokers who work on commission, are not  
28 employed in a bona fide professional capacity.

1           36.     The professional exemption does not apply to the plaintiffs or to the members of the  
2 Federal Collective Group because the status of a securities broker is not a recognized profession in a  
3 field of science or learning, and the skills are acquired through experience and an apprenticeship and  
4 the passage of a series of exams through self-study rather than at any institution of higher learning.

5           37.     In addition, for an occupation to qualify for the professional exemption, the occupation  
6 must be generally recognized as a profession requiring advanced knowledge in a field of science or  
7 learning customarily acquired by a prolonged course of specialized intellectual instruction. Although  
8 many members of the Federal Collective Group hold advanced degrees in business, many do not, and  
9 the degree in business is a general degree rather than a degree related to work as a stock broker. There  
10 is no generally recognized advanced degree from an institution of higher academic learning related to  
11 work as a stock broker, and even if there were, it is not generally required to have such a degree in  
12 order to become a securities broker employee of defendants.

13           38.     The Section 213(a)(1) exemption for employees employed in the capacity of outside  
14 salesman does not apply because neither plaintiffs nor the members of the Federal Collective Group  
15 were, or are, outside salespersons because plaintiffs and the other members of the Federal Collective  
16 Group were employed at the defendants' places of business.

17           39.     The Section 213(a)(1) exemption for executive or administrative personnel does not  
18 apply to members of the Federal Collective Group since they were not responsible for the supervision  
19 of other employees of defendants.

20           40.     The Federal Collective Group under the Fair Labor Standards Act includes all  
21 securities broker employees of defendants in the United States.

22           41.     For purposes of the Fair Labor Standards Act, the employment practices of defendants  
23 were and are uniform throughout the United States in all respects material to the claims asserted in this  
24 Complaint.

25           42.     There are no other exemptions applicable to plaintiffs and/or to members of the Federal  
26 Collective Group.

27           43.     Plaintiffs and the other members of the Federal Collective Group, either regularly or  
28 from time to time, worked more than 40 hours per week for defendants, and received no premium pay

1 for hours worked in excess of 40 hours per week.

2 44. In committing the wrongful acts alleged to be in violation of the Fair Labor Standards  
3 Act, defendants acted willfully in that it knowingly, deliberately and intentionally failed to pay  
4 overtime to plaintiffs and members of the Federal Class.

5 45. As a result of defendants' failure to pay overtime, plaintiffs and the members of the  
6 Federal Collective Group were damaged in an amount to be proved at trial.

7 46. Therefore, plaintiffs demand that they and the members of the Federal Collective  
8 Group be paid overtime compensation as required by the FLSA for every hour of overtime worked in  
9 any work week for which they were not compensated, plus interest and attorneys' fees as provided by  
10 law.

11 **SECOND CLAIM FOR RELIEF**  
12 **(Failure to Pay Overtime to Securities Brokers As Required By New Jersey Law)**  
13 **(Violation of N.J.S.A. 34:11-56a to 34:11-56a30)**

14 47. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set  
15 forth herein in full.

16 48. The New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a to 34:11-56a30, and its  
17 implementing regulations, provides that any work in excess of forty (40) hours in any one workweek  
18 shall be compensated at the rate of no less than one and one-half (1 ½) times the regular rate of pay  
19 for an employee.

20 49. New Jersey overtime law exempts from these overtime premium pay requirements  
21 certain "white collar" employees employed in a bona fide executive, administrative or  
22 professional capacity who are paid on a salary basis not less than a certain dollar amount.

23 50. Neither plaintiffs nor members of the New Jersey Class are part of any group exempt  
24 from the overtime requirements of New Jersey law.

25 51. The New Jersey Wage and Hour Regulations, specifically N.J.A.C. 12:56-7.6, provide  
26 that "[e]mployees in a bona fide executive, administrative, or professional capacity and outside sales  
27 persons shall be exempt from the overtime requirements of [the New Jersey Wage and Hour  
28 Regulations] - - -."

1           52.    The professional exemption does not apply to the plaintiffs or to the members of the  
2 New Jersey Class pursuant to N.J.A.C. 12:56-7.3 because the status of a securities broker is not a  
3 recognized profession in a field of science or learning or artistic endeavor, and the skills are acquired  
4 through experience and an apprenticeship and the passage of a series of exams through self-study  
5 rather than at any institution of higher learning.

6           53.    In addition, under N.J.A.C. 12:56-7.3, for an occupation to qualify for the professional  
7 exemption, the occupation must be generally recognized as a profession requiring advanced  
8 knowledge in a field of science or learning customarily acquired by a prolonged course of specialized  
9 intellectual instruction. Although many members of the New Jersey Class hold advanced degrees in  
10 business, many do not, and the degree in business is a general degree rather than a degree related to  
11 work as a stock broker. There is no generally recognized advanced degree from an institution of  
12 higher academic learning related to work as a stock broker, and even if there were, it is not generally  
13 required to have such a degree in order to become a securities broker employee of defendants.

14           54.    Pursuant to N.J.A.C. 12:56-7.4, the exemption under N.J.A.C. 12:56-7.6 for employees  
15 employed in the capacity of outside salesman does not apply because neither plaintiffs nor the  
16 members of the New Jersey Class were, or are, outside salespersons because plaintiffs and the other  
17 members of the New Jersey Class were employed at the defendants' places of business.

18           55.    Pursuant to N.J.A.C. 12:56-7.1 and 7.2, the exemption under N.J.A.C. 12:56-7.6 for  
19 executive or administrative personnel does not apply to plaintiffs and the other members of the New  
20 Jersey Class since, among other reasons, their primary duties were not in management and they were  
21 not responsible for the supervision of other employees of defendants, nor were their primary duties  
22 performance of office work related to management or the internal business operations of defendants.

23           56.    Plaintiffs and members of the New Jersey Class, either regularly or from time to time,  
24 worked more than 40 hours per week for defendants, and received no premium pay for hours worked  
25 in excess of 40 hours per week, and thereby suffered damages.

26           57.    Therefore, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C.  
27 Latz and Gerard Scorziello demand that they and all members of the New Jersey Class be paid  
28 overtime compensation as required by the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a to



34:11-56a30 for every hour of overtime worked in any workweek during the New Jersey Class Period for which they were not compensated, plus interest and attorneys fees as provided by law.

**THIRD CLAIM FOR RELIEF**  
**(Failure to Pay Overtime to Securities Brokers As Required By New York Law)**  
**(Violation of 12 NYCRR § 142-2.2)**

58. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth herein in full.

59. 12 NYCRR § 142-2.2 (2005), provides:

An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of Section [20]7 and Section [2]13 of 29 U.S.C. 201 et seq., the Fair Labor Standards Act of 1938 as Amended, provided, however that the exemptions set forth in Section [2]13(a)(2) and [2]13(a)(4) shall not apply. In addition, an employer shall pay employees subject to the exemptions of Section [2]13 of the Fair Labor Standards Act, as Amended, except employees subject to Section [2]13(a)(4) of such Act, overtime at a wage rate of one and one-half time the basis minimum hourly rate.

60. New York Law requires the payment of overtime compensation at one and one half times the regular rate for all hours worked in excess of 40 hours a week.

61. New York overtime law exempts from these overtime premium pay requirements certain "white collar" employees employed in a bone fide executive, administrative or professional capacity who are paid on a salary basis not less than a certain dollar amount.

62. An employee is defined as "any individual employed, suffered or permitted to work by an employer in any employment." 12 NYCRR § 142-2.14 (2005).

63. Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John Maskubi and all other members of the New York Class employed by defendants during the New York Class Period, either regularly or from time to time, work and/or worked more than 40 hours per week, and were, or are, compensated on either (i) a straight commission basis with no base salary, or (ii) entirely on salary, in either case with no premium pay for hours worked in excess of 40 hours.

64. Plaintiffs are not part of any group exempt from the overtime requirements of New York law.



1           65.     Certain securities brokers are categorized as “commission salesmen” employees under  
2     the New York Labor Law. “Commission salesman” is defined as “any employee whose principal  
3     activity is the selling of any goods, wares, merchandise, services, real estate, securities, insurance or  
4     any article or thing and whose earnings are based in whole or in part on commissions.” N.Y. Lab. Law  
5     §190.

6           66.     The commissions of “commission salesmen” are “wages” within the meaning of New  
7     York Labor Law § 190 and, therefore, subject to the overtime pay requirements of 12 NYCRR § 142-  
8     2.2.

9           67.     Members of the New York Class, those compensated on a commission basis as well as  
10    salaried broker trainees, are thus “employees” who receive “wages” within the meaning of New York  
11    Labor Law §§ 190(1) and 12 NYCRR § 142-2.2.

12          68.     Under 12 NYCRR § 142-2.2, members of the New York Class, those compensated on a  
13    commission basis as well as salaried broker trainees, are not subject to the Section 207 or Section 213  
14    exemptions of the Federal Fair Labor Standards Act.

15          69.     In addition, 12 NYCRR § 142-2.14 limits the administrative exemption to employees  
16    whose primary duty consists of the “performance of office or non manual field work directly related to  
17    management policies or general operations *of such individual's employer*” and, unlike the federal  
18    regulations, does not include employees whose primary duty is to perform support functions for the  
19    employer’s *customers*.

20          70.     Employees whose primary duty is to perform support services for the defendants’  
21    customers, for which defendants are paid, are production employees not entitled to the administrative  
22    exemption. Specifically, the last sentence of 29 C.F.R. § 541.203(b) states that “an employee whose  
23    primary duty is selling financial products does not qualify for the administrative exemption.”

24          71.     A defendant bears the burden of proving that its employees fall within an exemption  
25    enumerated in 12 NYCRR § 142-2.14.

26          72.     Because the provisions of the exemption are cumulative, each of the prerequisites must  
27    be satisfied, and thus, the absence of one of the requirements for the exemption ends the inquiry.  
28    Plaintiffs and members of the New York Class do not meet the definition of an administrative

1 employee contained in 12 NYCRR § 142-2.14 because their primary duty does not “consist of the  
2 performance of office or non manual field work directly related to management policies or general  
3 operations of such individual's employer,” but rather the sale of financial products to the employer's  
4 customers.

5 73. Therefore, Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John  
6 Maskubi demand that they and all members of the New York Class be paid overtime compensation as  
7 required by the New York Labor Law for every hour of overtime worked in any work week for which  
8 they were not compensated, plus interest and attorneys fees as provided by law.

9 **FOURTH CLAIM FOR RELIEF**  
10 **(Failure to Pay Overtime to Securities Brokers As Required By Connecticut Law)**  
11 **(Violation of Connecticut General Statute § 31-60(a), 31-76(c))**

12 74. Plaintiff incorporates by reference all of the allegations of all prior paragraphs as  
13 though fully set forth herein.

14 75. Under Connecticut law, “any employer who pays or agrees to pay to an employee less  
15 than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this  
16 part.” Conn. Gen. Stat. § 31-60(a).

17 76. A “wage” is defined as “compensation for labor or services rendered by an employee,  
18 whether the amount is determined on a time, task, piece, commission or other basis of calculation.”  
19 Conn. Gen. Stat. § 31-71a(3).

20 77. In Connecticut, the workweek is forty hours and any time worked above that requires  
21 payment at the rate of time and a half. Conn. Gen. Stat. § 31-76(c) (“No employer, except as otherwise  
22 provided herein, shall employ any of his employees for a workweek longer than forty hours, unless  
23 such employee receives remuneration for his employment in excess of the hours above specified at a  
24 rate not less than one and one-half times the regular rate at which he is employed.”).

25 78. Plaintiff and the Connecticut Class are not exempt under Connecticut law from the  
26 Connecticut overtime pay laws since they are not executives, administrators, or professionals.  
27 Connecticut General Statute § 31-76i exempts from entitlement to overtime pay “(e) any person  
28 employed in a bona fide executive, administrative or professional capacity as defined in the

1 regulations of the labor commissioner issued pursuant to section 31-60.” The regulations, at § 31-60-  
 2 14 define “employee employed in a bona fide executive capacity” in pertinent part as:

3  
 4 any employee (a) whose primary duty consists of the management of the  
 5 enterprise in which he is employed or of a customarily recognized  
 6 department or subdivision thereof; and (b) who customarily and regularly  
 7 directs the work of two or more other employees therein; and (c) who has  
 8 the authority to hire or fire other employees or whose suggestions and  
 9 recommendations as to the hiring or firing and as to the advancement and  
 10 promotion or any other change of status of other employees will be given  
 11 particular weight; and (d) who customarily and regularly exercise  
 12 discretionary powers; and (e) who does not devote more than twenty  
 13 percent . . . of his hours of work in the workweek to activities which are  
 14 not directly and closely related to the performance of the work described  
 in subdivisions (a) to (d), inclusive, of this section . . . and (f) who is  
 compensated for his services on a salary basis at a rate not less than . . .  
 one hundred twenty-five dollars per week [after January 1, 1969]. . . . Any  
 employee who is compensated on a salary basis at a rate of not less than  
 one hundred seventy-five dollars per week . . . and whose primary duty  
 consists of the management of the enterprise in which he is employed or  
 of a customarily recognized department or subdivision thereof, and  
 includes the customary and regular direction of the work of two or more  
 other employees therein, shall be deemed to meet all of the requirements  
 of this section.

15  
 16 79. There are no other exemptions applicable to Plaintiff Janemarie Lenihan and the other  
 17 members of the Connecticut Class.

18 80. Plaintiffs and the other members of the Connecticut Class, either regularly or from time  
 19 to time, worked more than 40 hours per week for defendants, and received no premium pay for hours  
 20 worked in excess of 40 hours per week, and thereby suffered damages.

21 81. As a result of defendants’ failure to pay overtime, Plaintiff Janemarie Lenihan and the  
 22 other members of the Connecticut Class were damaged in an amount to be proven at trial.

23 82. Therefore, Plaintiff Janemarie Lenihan demands that she and the other members of the  
 24 Connecticut Class be paid overtime compensation as required by Connecticut labor law for every hour  
 25 of overtime worked in any work week for which they were not compensated, plus interest and  
 26 attorneys’ fees as provided by law.

**FIFTH CLAIM FOR RELIEF**  
**(Failure to Pay Overtime to Securities Brokers  
As Required By Laws of "Other States")**

83. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth herein in full.

84. To the extent that the laws of States other than New Jersey, New York and Connecticut ("Other States") provide that that any work performed by persons employed in Covered Positions in excess of forty (40) hours in any one workweek shall be compensated with overtime premium pay at a scale based on a multiple of the regular rate of pay for an employee, members of the Other States Class were entitled to such overtime premium compensation for work performed in excess of forty (40) hours in any one workweek while employed by defendants in those Other States.

85. To the extent that the overtime laws of the Other States exempt from these overtime premium pay requirements certain "white collar" employees employed in a bone fide executive, administrative or professional capacity who are paid on a salary basis not less than a certain dollar amount, the members of the Other States Class are not part of any group exempt from the overtime requirements of the laws of the Other States.

86. Members of the Other States Class, either regularly or from time to time, worked more than 40 hours per week for defendants, and received no premium pay for hours worked in excess of 40 hours per week, and thereby suffered damages.

87. Therefore, the members of the Other States Class demand that they be paid overtime compensation as required by the laws of the Other States for every hour of overtime worked in any workweek during the Other States Class Period for which they were not compensated, plus interest and attorneys fees as provided by law.

**SIXTH CLAIM FOR RELIEF**  
**(Impermissible Deductions from Wages of the New Jersey Class)**

88. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full herein.

89. The New Jersey State Wage and Hour Law, N.J.S.A. 34:11-4.4 prohibits an employer from "withholding" or "diverting" from wages any sums other than those specifically authorized by

1 that statute. Nowhere in the statute is an employer, such as Morgan Stanley, authorized to deduct  
2 from plaintiffs' pay, or the pay of similarly situated employees, wages payable to other employees of  
3 defendant.

4 90. Nevertheless, defendants required Plaintiffs Robert Steinberg, Robert N. Adler, Frank  
5 V. Finizia, Brian C. Latz and Gerard Scorziello and members of the New Jersey Class to pay  
6 additional sums to defendants' other employees for their labor necessary to complete defendants'  
7 work.

8 91. As such, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz  
9 and Gerard Scorziello and the New Jersey Class members incurred expenditures and losses in direct  
10 consequence of the discharge of their duties, or of their obedience to the directions of their employer  
11 which have not yet been reimbursed by defendants.

12 92. Thus, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz and  
13 Gerard Scorziello and the members of the New Jersey Class were forced to contribute to the capital  
14 and expenses of the defendants' business which contributions must be refunded by defendants to each  
15 plaintiff class member.

16 93. Therefore, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C.  
17 Latz and Gerard Scorziello demand on behalf of themselves and on behalf of the members of the New  
18 Jersey Class, reimbursement for expenditures or losses incurred in direct consequence of the  
19 discharge of their duties, or of their obedience to the directions of their employers, plus return of all  
20 coerced investments in the business of the employers, with interest and attorneys fees.

21 **SEVENTH CLAIM FOR RELIEF**  
22 **(Impermissible Deductions from Wages of the New York Class)**

23 94. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set  
24 forth in full herein.

25 95. New York's Labor Law expressly prohibits an employer from making unauthorized  
26 deductions from employees' wages. Nowhere in said statute is an employer, such as defendants,  
27 authorized to deduct from plaintiffs' pay, or the pay of similarly situated employees, wages payable to  
28 other employees of defendants.

1           96.   New York Labor Law § 193 provides:

2                   **Deductions from wages:**

3                   1.    No employer shall make any deductions from the wages of  
4                   an employee, except deductions which:

5                           a.    are made in accordance with the provisions of any  
6                           law or any rule or regulation issued by any governmental agency; or

7                           b.    are expressly authorized in writing by the  
8                           employee and are for the benefit of the employee; provided that such  
9                           authorization is kept on file on the employer's premises. Such authorized  
10                          deductions shall be limited to payments for insurance premiums, pension  
11                          or health and welfare benefits, contributions to charitable organizations,  
12                          payments for United States bonds, payments for dues or assessments to a  
13                          labor organization, and similar payments for the benefit of the employee.

14                   2.    No employer shall make any charge against wages, or  
15                   require an employee to make any payment by separate transaction unless

16                           such charge or payment is permitted as a deduction from wages under the  
17                           provisions of subdivision one of this section.

18           N.Y. Lab. Law § 193 (Consol. 2004).

19           97.    Thus, Section 193 prohibits deductions from employees' wages unless the deductions  
20           are (1) "expressly authorized" by and "for the benefit of the employee" and, (2) are limited to the  
21           enumerated categories of permissible deductions.

22           98.    Wages are defined as "the earnings of an employee for labor or services rendered,  
23           regardless of whether the amount of earnings is determined on a time, piece, commission or other  
24           basis." N.Y. Lab. Law § 190(1) (Consol. 2004).

25           99.    Defendants made unlawful deductions from the wages paid to plaintiffs and the New  
26           York Class for expenses which were, as a matter of law, the employer's overhead expenses, including  
27           (a) deductions of the wages paid to "cold callers" hired to obtain business for defendants, (b)  
28           deductions for amounts paid to the Security Broker's secretary or sales assistant(s) for doing the  
29           business of defendants and communicating with customers, (c) deductions for marketing materials  
30           promoting defendants' business, and (d) deductions for "broken trades." A "broken trade" is where a  
31           customer challenged a transaction done for his benefit by the Securities Broker and the trade was  
32           cancelled. Where the cancellation of the transaction resulted in a loss, defendants deducted the

1 amount of any loss from the commissions due the Securities Broker, both for the actual losses incurred  
 2 by the customer and any commission paid on that transaction; however, if the cancellation of the  
 3 transaction resulted in a gain on the transaction, defendants retained the gain for their own benefit.

4 100. As such, Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John  
 5 Maskubi and the other members of the New York Class had expenditures and losses which were  
 6 incurred in direct consequence of the discharge of their duties, or of their obedience to the directions  
 7 of  
 8 their employers which have not yet been reimbursed by defendants.

9 101. Thus, the described deductions violate N.Y. Lab. Law § 193 because they are neither  
 10 for the benefit of the employee nor of a similar type to the deductions allowable under the statute.

11 102. Therefore, Plaintiffs Paul Roles, David Andrew Gasman, Israel Harman and John  
 12 Maskubi demand on behalf of themselves and the other members of the New York Class,  
 13 reimbursement for all deductions, expenditures or losses deducted or incurred in violation of N.Y.  
 14 Lab. Law § 193, with interest and attorneys fees.

15 **EIGHTH CLAIM FOR RELIEF**  
 16 **(Impermissible Deductions from Wages of the Connecticut Class)**  
 17 **(Connecticut General Statute § 37-71(e))**

18 103. Plaintiffs incorporate by reference all of the allegations of all prior paragraphs as  
 19 though fully set forth herein.

20 104. Plaintiff Janemarie Lenihan and the other members of the Connecticut Class also bring  
 21 claims for improper deductions from wages. Under Connecticut law “[n]o employer may withhold or  
 22 divert any portion of an employee's wages unless (1) the employer is required or empowered to do so  
 23 by state or federal law, or (2) the employer has written authorization from the employee for deductions  
 24 on a form approved by the commissioner, or (3) the deductions are authorized by the employee, in  
 25 writing, for medical, surgical or hospital care or service, without financial benefit to the employer and  
 26 recorded in the employer's wage record book.” Conn. Gen. Stat. § 31-71(e).

27 105. In this case, defendants improperly withheld compensation for related administrative  
 28 expenses.



1           106. Therefore, Plaintiff Janemarie Lenihan demands that defendants reimburse any  
2 members of the Connecticut Class from whom it improperly withheld a portion of their compensation  
3 in order to pay overhead expenses of the defendants, plus interest and attorneys' fees as provided by  
4 law.

5 **NINTH CLAIM FOR RELIEF**  
**(Impermissible Deductions from Wages of the Other States Class)**

107. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set forth in full herein.

108. To the extent that the laws of the Other States prohibit an employer from “withholding” or “diverting” from wages any sums other than those specifically authorized by law, an employer, such as Morgan Stanley, is and was not authorized to deduct from the pay of members of the Other States Class, wages payable to other employees of defendants.

13 109. Defendants required members of the Other States Class to pay additional sums to  
14 defendants' other employees for their labor necessary to complete defendants' work.

15           110. As such, members of the Other States Class incurred expenditures and losses in direct  
16 consequence of the discharge of their duties, or of their obedience to the directions of their employer  
17 which have not yet been reimbursed by defendants.

18            111. Thus, the described deductions were unlawful because they are neither for the benefit  
19 of the employee nor of a similar type to the deductions allowable under the laws of the Other States.

112. Therefore, members of the Other States Class demand reimbursement for all deductions, expenditures or losses deducted or incurred in violation of the laws of the Other States, with interest and attorneys fees.

23 **TENTH CLAIM FOR RELIEF**  
**(Chargebacks)**

25            113. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set  
26    forth in full herein.

114. Defendants, as a regular business practice, wrongfully charged back both commissions  
and the actual value of the stock losses allegedly caused by a Securities Broker through simple

1 negligence or no fault of the Securities Broker, including chargebacks for "broken trades." A "broken  
2 trade" is where a customer challenged a transaction done for his benefit by the Securities Broker and  
3 the trade was cancelled. Where the cancellation of the transaction resulted in a loss, defendants  
4 deducted the amount of any loss from the commissions due the Securities Broker, both for the actual  
5 losses incurred by the customer and any commission paid on that transaction; however, if the  
6 cancellation of the transaction resulted in a gain on the transaction, defendants retained the gain for  
7 their own benefit..

8 115. Such charge backs are prohibited by the Labor Laws of New Jersey, New York,  
9 Connecticut and the Other States.

10 116. Defendants systematically underpaid its Securities Broker employees by holding back  
11 a significant portion of commissions for its own purposes to pay others, and then either paying the  
12 wages later than the time required by the law or simply not paying them at all.

13 117. Defendants did not pay plaintiffs or the other members of the New Jersey, New York,  
14 Connecticut and Other States Classes all wages due as required by law, and still has not paid such  
15 amounts which remain due and owing and as a result the plaintiffs and members of the Classes have  
16 suffered damages.

17 118. Therefore, plaintiffs demand an accounting and payment of all wages due to them and  
18 to the other members of the New Jersey, New York, Connecticut and Other States Classes, plus  
19 interest and attorneys fees allowed by law.

20 **ELEVENTH CLAIM FOR RELIEF**  
21 **(Penalties for Violation of N.J.S.A. 34:11-4.3)**

22 119. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set  
23 forth in full.

24 120. The New Jersey Wage Payment Law, N.J.S.A. 34:11-4.3, provides that when an  
25 employee is discharged or terminates employment for any reason, the employer must pay the  
26 employee all wages due not later than the regular payday for the pay period during which the  
27 employee's termination, suspension or cessation of employment took place.

28

1           121. Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz and  
2 Gerard Scorziello and many of the members of the New Jersey Class have terminated their  
3 employment with defendants and defendants have not tendered payment and/or restitution of wages  
4 owed or in the manner required by New Jersey law to them and have thereby caused plaintiffs and  
5 such members of the New Jersey Class to suffer damages.

122. Therefore, Plaintiffs Robert Steinberg, Robert N. Adler, Frank V. Finizia, Brian C. Latz and Gerard Scorziello, on behalf of themselves and members of the New Jersey Class, demand appropriate penalties for defendants' failure to timely pay wages during the New Jersey Class Period.

**TWELFTH CLAIM FOR RELIEF**  
**(Breach of Contract)**

11           123. Plaintiffs repeat and reallege by reference the allegations set forth above, as though set  
12 forth in full herein.

124. The conduct of the plaintiffs and members of the Classes and the defendants, including the promise of the defendants to pay plaintiffs and members of the Classes all amounts due to them in compliance with state and/or federal law in exchange for the performance by plaintiffs and the members of the Classes of the duties of their employment, including their performance of their duties as Securities Brokers and as employees in Covered Positions of defendants, constitutes a valid contract between the parties.

19 125. This contract was supported by good and adequate consideration.

126. Plaintiffs and the other members of the Classes fully performed all of the duties and obligations imposed upon them pursuant to their contracts with Morgan Stanley. The conduct of defendants in failing to pay the plaintiffs and the other members of the Classes all of the overtime wages due to them and other benefits, constitutes a breach of the contract between the parties and caused plaintiffs and members of the Classes to suffer damages.

25 WHEREFORE, in accordance with all of the above claims in the First through Twelfth Claims  
26 for Relief, inclusive, plaintiffs demand judgment in their favor and in favor of the other members of  
27 the Federal Collective Group and the Classes and against defendants, individually, jointly and  
28 severally, for:

1           A.     Compensatory damages, according to proof at trial, including compensatory damages  
2 and restitution for both regular and overtime compensation due plaintiffs and the other members of the  
3 Federal Collective Group and the Classes, during the applicable Federal Eligibility Period and the  
4 Class Periods plus interest thereon at the statutory rate;

5           B.     Restitution and reimbursement to plaintiffs and to the other members of the New  
6 Jersey, New York, Connecticut and Other States Classes of all employee expenses not reimbursed by  
7 defendants, during the New Jersey, New York, Connecticut and Other States Class Periods, including:  
8 expenses incurred to pay assistants and other employees of defendants, all commissions charged back  
9 to plaintiffs and to the other members of the New Jersey, New York, Connecticut and Other States  
10 Classes and/or all other monies either unlawfully deducted from wages or required to be paid back  
11 directly by defendants, including any gain on any incomplete or undone trades;

12          C.     An order temporarily, preliminarily and permanently enjoining and restraining  
13 defendants, from engaging in similar unlawful conduct as set forth herein;

14          D.     An order requiring defendants to provide an accounting of all wages and all sums  
15 unlawfully charged back and withheld from compensation due to plaintiffs and the other members of  
16 the Federal Collective Group and the Classes;

17          E.     Imposition of a constructive trust upon the assets of the defendants to the extent of the  
18 sums due to plaintiffs and to the other members of the Federal Collective Group and Classes herein;

19          F.     Declaratory relief including declarations setting forth the rights of plaintiffs and the  
20 members of the Federal Collective Group and the Classes, as alleged in this Complaint and setting  
21 forth the defendants' violations of those rights;

22          G.     Interest;

23          H.     Reasonable attorneys fees and costs of suit; and

24          I.     Such other and further relief as the Court deems just and equitable; however,

25          J.     No penalties (statutory or otherwise), liquidated damages or punitive damages of any  
26 kind under New York law are sought in this action and are expressly waived.

1 Plaintiffs demand a trial by jury for all matters so triable.

2 Dated: November 29, 2006

3 WOLF HALDENSTEIN ADLER  
4 FREEMAN & HERZ LLP  
5 SCHATZ & NOBEL, P.C.

6  
7 By Francis M. Gregorek / PRR  
8 FRANCIS M. GREGOREK

9 WINNE, BANTA, HETHERINGTON,  
10 BASRALIAN & KAHN, P.C.  
11 JERRY K. CIMMET  
12 LAW OFFICE OF JOHN M. KELSON

13 By Jerry K. Cimmet / PRR  
14 JERRY K. CIMMET

15 FOLKENFLIK & McGERITY  
16 SCHRADER & ISRAELY, LLP

17 By Max Folkenflik / PRR  
18 MAX FOLKENFLIK

19 Attorneys for Plaintiffs  
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JS44

(Rev. 07/89)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

**I (a) PLAINTIFFS**

ROBERT STEINBERG, ROBERT N. ADLER, FRANK V. FINIZIA, BRIAN C. LATZ, GERARD SCORZIELLO, PAUL ROLES, JANEMARIE LENIHAN, DAVID ANDREW GASMAN, ISRAEL HARMAN and JOHN MASKUBI

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**

(EXCEPT IN U.S. PLAINTIFF CASES)

BERGEN COUNTY, NEW JERSEY

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

FRANCIS M. GREGOREK, RACHELE R. RICKERT  
WOLFHALDENSTEIN ADLER FREEMAN & HERZ LLP  
750 B STREET, SUITE 2770  
SAN DIEGO, CA 92101  
TELEPHONE: (619)239-4599

**DEFENDANTS**

MORGAN STANLEY & CO. INCORPORATED and MORGAN  
STANLEY DW INC.

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**ATTORNEYS (IF KNOWN)**

'06CV 2628 BEN NLS

**II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)**

U.S. Government Plaintiff

☒ Federal Question  
(U.S. Government Not a Party)

2U.S. Government Defendant

☐ Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

	PT	DEF		PT	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business in This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business in Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

**IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).**

28 U.S.C. §1331, 28 U.S.C. §1332d, 28 U.S.C. §1367

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	610 Agriculture	422 Appeal 28 USC 158	400 State Reappointment
120 Marine	310 Airplane	620 Other Food & Drug	423 Withdrawal 28 USC 157	410 Antitrust
130 Miller Act	315 Airplane Product Liability	625 Drug Related Seizure of Property 21 USC881	<b>PROPERTY RIGHTS</b>	430 Banks and Banking
140 Negotiable Instrument	320 Assault, Libel & Slander	630 Liquor Laws	820 Copyrights	450 Commerce/ICC Rates/etc.
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	640 RR & Truck	830 Patent	460 Deportation
151 Medicare Act	340 Marine	650 Airline Regs	840 Trademark	470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	810 Selective Service
153 Recovery of Overpayment of Veterans Benefits	350 Motor Vehicle	690 Other	861 HIA (13958)	850 Securities/Commodities Exchange
160 Stockholders Suits	355 Motor Vehicle Product Liability	<b>LABOR</b>	862 Black Lung (923)	875 Customer Challenge 12 USC
190 Other Contract	360 Other Personal Injury	<input checked="" type="checkbox"/> Fair Labor Standards Act	863 DIWC/DIWW (405(g))	891 Agricultural Acts
195 Contract Product Liability	385 Property Damage Product Liability	720 Labor/Mgmt. Relations	864 SSID Title XVI	892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	730 Labor/Mgmt. Reporting & Disclosure Act	865 RSI (405(g))	893 Environmental Matters
210 Land Condemnation	441 Voting	740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	894 Energy Allocation Act
220 Foreclosure	442 Employment	790 Other Labor Litigation	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations	791 Empl. Ret. Inc. Security Act	871 IRS - Third Party 26 USC 7609	900 Appeal of Fee Determination Under Equal Access to Justice
240 Tort to Land	444 Welfare			950 Constitutionality of State
245 Tort Product Liability	440 Other Civil Rights			890 Other Statutory Actions
290 All Other Real Property				
	<b>PRISONER PETITIONS</b>			
	510 Motions to Vacate Sentence Habeas Corpus			
	530 General			
	535 Death Penalty			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prisoner Conditions			

**VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)**

☒ Original Proceeding    2 Removal from State Court    3 Remanded from Appellate Court    4 Reinstated or Reopened    5 Transferred from another district (specify)    6 Multidistrict Litigation    7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 ☒

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY (See Instructions):**

JUDGE ROBERT T. BENITEZ

Docket Number 3:04-CV-1858 BEN

DATE 11/29/06

SIGNATURE OF ATTORNEY OF RECORD Rachele R. Rickert (JMA)

ORIGINAL

OR 132194 Sa 11/29/06 \$350

UNITED STATES  
DISTRICT COURT  
Southern District of California  
San Diego Division

# 132194 - A1  
November 29, 2006

Code	Case #	Qty	Amount
CV086900	3-06-CV-2628		60.00 CH
	Judge - BENETIZ		
CV086400			100.00 CH
CV510000			190.00 CH

Total-> 350.00

FROM: CIVIL FILING  
ROBERT STEINBERG ET AL V.  
MORGAN STANLEY & CO. ET AL  
RCN 56933 SH